SECTION 1

INTRODUCTION

1-1. Purpose. The purpose of this pamphlet is to provide information regarding remedial design (RD) activities; response actions (remedial action (RA) and removals) involving hazardous, toxic and radioactive wastes (HTRW); and ordnance and explosives (OE) response actions. It highlights the unique requirements which resident engineers (RE) must be aware of for the successful completion of environmental projects.

1-2. Applicability.

a. This pamphlet applies to U.S. Army Corps of Engineers (USACE) resident and area offices with delegated authority to administer contracts involving HTRW and OE response actions. It is intended to highlight aspects of HTRW and OE response actions that differ from or require additional attention compared to traditional military/civil construction projects. This pamphlet applies to all HTRW/OE field activities executed under the Environmental Protection Agency (EPA) Superfund Program, the Defense Environmental Restoration Program (DERP), activities related to civil works, support for others (SFO), the Formerly Utilized Sites Remedial Action Program (FUSRAP), etc. This pamphlet is subject to modifications as the HTRW/OE programs evolve.

b. The RE should note that while many of the practices referenced herein and much of the documentation provided are applicable to asbestos abatement, radioactive waste cleanup, and OE activities, the regulations and procedures for these are very specialized and complex. The RE is cautioned to seek out more guidance and assistance when working with asbestos, radioactive material, or when facing potential exposure to ordnance or chemical warfare material; i.e., the HTRW design district, the HTRW Center of Expertise (CX) or the OE Mandatory Center of Expertise (MCX) should be consulted.

c. This EP could be used as guidance for overseas environmental work. The resident engineer must use judgment in determining what portions of this document are applicable to their project. The “Status of Forces Agreement” outlines what regulations must be followed. For additional guidance on overseas environmental projects, refer to the Overseas Environmental Baseline Guidance Document (OEBGD). The OEBGD can be found at: http://osiris.cso.uiuc.edu/denix/Public/Library/Intl/OEBGD/toc.html

1-3. Distribution. Approved for public release. Distribution is unlimited.

1-4. References. Refer to Appendix A for a list of all references used in the preparation of

this document. Hyperlink addresses are provided where possible for referenced documents. Some references that are not easily obtainable are provided in their entirety in Appendix F.

1-5. Background. The background of the environmental restoration programs is very complex, particularly those aspects involving HTRW and OE. Therefore, a general description of the various programs and associated activities is presented below in paragraphs a through g.

a. EPA Superfund Program. In February 1982, USACE entered into an interagency agreement (IAG) with the EPA to provide assistance in executing Public Law 96-510, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, also known as Superfund. The Superfund legislation was amended by Public Law 99-499, the Superfund Amendments and Reauthorization Act (SARA) of 1986. Superfund legislation mandated that both Federal and non-Federal agencies remedy uncontrolled hazardous and toxic waste (HTW) sites caused by past and unregulated practices. Upon expiration of the first agreement between EPA and USACE, a second IAG was signed in December 1984 which extended the partnership indefinitely. All assignments performed on behalf of the EPA are under the direct control of the regional EPA remedial project manager (RPM). Regular communication between the USACE RE, the USACE project manager (PM), and the EPA RPM is essential. Under these IAGs, the USACE is responsible for execution of activities assigned by EPA. These assignments may include:

(1) providing technical assistance during EPA's execution of remedial investigations/ feasibility studies (RI/FS);

(2) acting as the contracting officer (CO) for "Federal lead" RD/Remedial Action (RA) activities;

(3) managing RA and removal projects;

(4) providing technical assistance during EPA enforcement activities;

(5) providing technical assistance and oversight of EPA's Alternative Remedial Contracting Strategy (ARCS) contractors;

(6) assisting in the acquisition of real estate;

(7) providing operation and maintenance (O&M) support activities; and

(8) assisting EPA in the implementation of community relation plans and EPA's cost recovery program.

b. DERP. DERP was formally authorized by Congress in 1986 to evaluate and remediate contamination at active and formerly used defense sites (FUDS). However, Congress had provided appropriation since FY 84 (Defense Appropriation Act) for DOD to initiate environmental restoration activities at properties formerly owned/used by the Department of Defense (DOD). DERP is implemented subject to and in a manner consistent with CERCLA and SARA, however, environmental restoration under this program is not limited to only those activities legally required by CERCLA. At the USACE level, the DERP program is considered to be comprised of three elements:

(1) The Installation Restoration Program (IRP) in which active Army installations are investigated and remediated. In addition, USACE is assisting all DOD services and the Defense Logistics Agency (DLA) with a full range of installation restoration support.

(2) The Formerly Used Defense Sites (FUDS) program in which former DOD **properties** (including OE sites) are restored. DOD assigned the Army as the Executive Agent for the FUDS Program. USACE was delegated by the Army, per memorandum dated 30 Nov 83, the responsibility for management and execution of the FUDS program, including negotiations to determine DOD liability as a Potentially Responsible Party (PRP). For FUDS program guidance/information, refer to the "Defense Environmental Restoration Program for FUDS-Program Manual." The USACE internet address for FUDS is located at: http://hq.environmental.usace.army.mil/programs/fuds/fuds.html

(3) The Defense State Memorandum of Agreement/Cooperative Agreements (DSMOA/CA) Program which involves IRP (all services), FUDS, and Base Realignment and Closure (BRAC) activities. The DSMOA/CA Program was developed to facilitate state involvement in providing technical assistance required for timely execution of DOD activities conducted under the DERP. These DSMOAs/CAs provide the mechanism to involve states in IRP, FUDS, and BRAC activities by establishing the terms and conditions by which they are reimbursed for the cost of providing technical support. Other than at Formerly Used Defense Sites, field offices will have no involvement in DSMOA activities unless specifically requested by the customer (installation/base).

c. BRAC Program. The BRAC program requires closure and subsequent disposal of designated DOD installations. The USACE may be involved in:

(1) preparing National Environmental Policy Act (NEPA) documentation (not generally required if the project is a remedial action done consistent with CERCLA);

(2) preparing National Historic Preservation Act (NHPA) compliance documentation;

(3) performing environmental restoration (including HTRW and OE response

actions); and

(4) performing real property actions.

d. HTRW SFO Program (other than EPA Superfund).

(1) Upon request, the USACE provides environmental restoration support for non-DOD agencies on a reimbursable basis.

(2) Past and present customers include the Department of Commerce (DOC), the Department of Energy (DOE), the Veterans Administration (VA), the General Services Administration (GSA), the Federal Emergency Management Agency (FEMA), the Commodity Credit Corporation (CCC), the Federal Aviation Administration (FAA), the Farm Services Agency (FSA), the Environmental Protection Agency (EPA), and the Bureau of Land Management (BLM). Examples of SFO projects include assisting:

(a) DOE with environmental restoration and waste management activities;

(b) DOC with environmental restoration of contaminated properties acquired through defaults on government guaranteed loans;

(c) FSA in conducting preliminary assessments of properties acquired through foreclosure or bankruptcy;

(d) FAA with their underground storage tank remediation program;

(e) GSA on an as-needed basis for underground storage tank removal and environmental assessments; and

(f) EPA with their Brownfields program.

e. FUSRAP.

(1) FUSRAP was one of several DOE programs created to address radioactive contamination in excess of current guidelines at a number of sites used by two of DOE's predecessor agencies, the Manhattan Engineer District (MED) and the Atomic Energy Commission (AEC). The sites were used for processing and storing uranium and thorium ores from the 1940s through the 1960s. Other sites included foundries, machine shops, research facilities, and nuclear fuel fabrication facilities. Many FUSRAP sites are chemically contaminated as well. Toxic chemicals include heavy metals (e.g., lead and beryllium), polychlorinated biphenyls (PCBs), volatile organic compounds (VOCs), and pesticides. The

Federal Government owned some of these sites; universities, institutions, and certain private entities owned others.

(2) The Energy and Water Development Appropriations Act for FY 1998, signed into law on 13 October 1997, transferred responsibility for the administration and execution of the FUSRAP from DOE to the USACE. USACE is the "responsible agency" and is responsible for the hazardous waste generated from FUSRAP sites.

(3) Overall program management resides within Headquarters (HQ) USACE Directorate of Civil Works. The Directorate of Military Programs is the program manager for current year execution. Program and project management responsibility resides at the geographical civil works divisions and districts. Execution is the responsibility of the geographic civil works districts and the HTRW design districts.

f. Federal Facilities Compliance Support Program. Upon request from a local Federal facility or agency, the USACE can provide environmental compliance support. Examples of types of work include:

(1) preparing Resource Conservation and Recovery Act (RCRA) Part B permit applications;

(2) preparing closure plans;

(3) preparing waste analysis plans;

(4) preparing spill prevention, control, and countermeasure plans;

(5) preparing underground storage tank site assessment plans;

(6) preparing contingency plans;

(7) preparing National Pollutant Discharge Elimination System (NPDES) Permit applications;

(8) preparing air quality permit applications; and

(9) reviewing environmental projects for technical adequacy.

g. Potentially Responsible Party (PRP) Activities.

(1) Under CERCLA, as amended by SARA, PRPs are those groups or individuals

identified as potentially liable for the costs of cleaning up contaminated sites. When requested, USACE may also assist EPA in their enforcement actions on sites where a PRP is performing cleanup activities. USACE's role on these sites generally consists of technical oversight and quality assurance. This provides assurance to EPA that the technical requirements of the settlement agreement/consent decree will be met. For additional guidance/information on PRP activities, refer to Section 12 of this pamphlet.

(2) In executing the DERP program at FUDS properties and as the operator of civil works facilities, USACE is frequently involved in PRP liability issues. Typically, in those instances where DOD investigations have not provided an indication of its responsibility for site contamination, the DOD may receive notification that it is being considered as a PRP under CERCLA in one of the following ways:

(a) EPA or state regulator provides notice of PRP status;

(b) private party files suit seeking contribution, or provides notice to DOD of alleged contamination seeking DOD acknowledgment of CERCLA liability; and

(c) another Federal agency currently responsible for the property seeks DOD acknowledgment of responsibility for past contamination during time of DOD control of the property, and DOD contribution for remediating the property.

(3) In addition to the normal documents developed during other environmental restoration activities such as the Inventory Project Report (InPR), project execution report, etc., the following documents may be developed as part of the PRP process:

(a) a Site Ownership and Operation History (SOOH) and Cost Allocation report which serves as the basis for the negotiating position and settlement offer; and

(b) a settlement agreement.

(4) When requested, USACE may also be involved in assisting other Federal agencies when these agencies become PRPs.